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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/726,172

12/02/2003

Roger H. Hamilton

998\_001CIP

4133

20874

7590

04/27/2006

WALL MARJAMA & BILINSKI  
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SYRACUSE, NY 13202

EXAMINER

YIP, WINNIE S

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/726,172	HAMILTON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Winnie Yip	3636	

All participants (applicant, applicant's representative, PTO personnel):

- (1) Winnie Yip. (3) \_\_\_\_\_  
 (2) Mr. Bilinski. (4) \_\_\_\_\_

Date of Interview: 25 April 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference  
 c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
 If Yes, brief description: \_\_\_\_\_

Claim(s) discussed: Proposed claims 1 and 11.


Identification of prior art discussed: In the record.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

  
**WINNIE YIP**  
**PRIMARY EXAMINER**

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

\_\_\_\_\_  
 Examiner's signature, if required

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

The proposed claims 1 and 11 were discussed and they appear to be overcome the prior art of record. However, the proposed claims include a "means" plus function which is not clearly defined in the specification as originally filed. This limitation should be changed. In addition, a newly discovered reference, U.S. Patent No. 4,850,383, appears to teach the features of "adjustable upper and lower straps" as properly claimed. Therefore, Examiner has no commitment on the proposed amendment. A final decision will be based upon the formal submission.



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## **FACSIMILE TRANSMISSION**

**To:** Examiner Yip  
Art Unit: 3636

**Facsimile No:** 571-273-6870

**From:** Peter J. Bilinski

**Date:** April 17, 2006

**Re:** U.S. Patent Application No. 10/726,172  
Our File No. 998\_001CIP

**Pages:** 13 (including cover page)

**Comments:** Examiner Yip,

Further to your telephone conversation this morning with my Assistant, Sue Aregano, attached is a copy of a draft response to the outstanding non-final Office Action for your review for the above-captioned patent application for our telephone interview Tuesday, April 25<sup>th</sup> at 2:00 PM.

In the meantime, if you have any questions, please contact my Assistant.

Thank you.

IMPORTANT - THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT READING, DISSEMINATING, DISTRIBUTING OR COPYING THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND DESTROY THE COMMUNICATION. THANK YOU.

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**PROPOSED – FOR DISCUSSION PURPOSES ONLY**

I hereby certify that this correspondence is being deposited with the United States Postal Service as express mail addressed to Mail Stop: Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on April 17, 2006. Express Mail Label No. EV 676906414 US

Suzanne C. Aregano

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 10/726,172 Confirmation No.: 4133  
Applicant: Roger H. Hamilton et al.  
Filed: December 2, 2003  
Art Unit: 3636  
Examiner: Winnie S. Yip  
Docket No.: 998\_001CIP  
Customer No.: 20874

Mail Stop: Amendment  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**AMENDMENT AND RESPONSE TO FIRST OFFICE ACTION**

Sir:

In response to the non-final Office Action, dated January 18, 2006, please amend the above identified patent application, without prejudice, as follows:

**Amendments to the Specification** begin on page 2 of this paper.

**Amendments to the Claims** are reflected in the listing of claims which begins on page 3 of this paper.

**Remarks** begin on page 6 of this paper.

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## **PROPOSED – FOR DISCUSSION PURPOSES ONLY**

### **AMENDMENTS TO THE SPECIFICATION:**

Please replace paragraph [0001] on page 1 with the following amended paragraph:

This application is a continuation in part application of U.S. Patent Application No. 10/037,207, filed ~~January 7, 2002~~ January 4, 2002, the entire contents of which are herein incorporated by reference.

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### AMENDMENTS TO THE CLAIMS:

This listing of claims will replace all prior versions, and listings, of claims in the above-captioned patent application:

### Listing of Claims:

1. (Currently Amended) A carrier for retaining an oxygen bottle, said carrier comprising;

a flexible open-top container adapted for maintaining a close fitting relationship with an oxygen bottle, said container including an upper mouth portion ~~having made at least partially from a stiff material~~ plastic peripheral insert to enable an oxygen bottle to be loaded therein vertically[;] and a flexible upper bottle retaining portion, adapted for preventing a retained oxygen said bottle from falling out of said carrier;

{ first strap means } for adjustably retaining said flexible open-top container to an upper support of said appliance, said first strap means including a pair of upper straps extending from opposing sides of the upper bottle retaining portion of said container, each of said upper strap pair having a snap-fitting buckle portion at the free end of each of said upper straps wherein a first of each of said upper strap pair is looped around a portion of said upper support portion and is attached to the other of said upper trap pair via an adjustable and releasable buckle connection; and

{ second strap means } for adjustably retaining said flexible open-top container to a lower support of said appliance, said second strap means including lower straps extending from opposite sides of the lower portion of said flexible open-top container, each of said lower straps including hook and loop fasteners enabling each of said lower straps to be selectively looped around the lower support portion of an orthopedic appliance and fastened upon itself, each of said first and second strap means enabling said flexible open-top container to be selectively adjustable both laterally and vertically when attached to an orthopedic appliance and in which said first and second strap means enable said carrier to be selectively attachable to at least one of a first orthopedic appliance and a second orthopedic appliance.

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2. (Canceled).
3. (Canceled).
4. (Withdrawn) A carrier as recited in Claim 2, wherein said appliance is a walker.
5. (Currently Amended) A carrier as recited in Claim 3, wherein said first orthopedic appliance is a wheelchair and said second orthopedic appliance is a walker.
6. (Canceled).
7. (Canceled).
8. (Original) A carrier as recited in Claim 1, including means for retaining personal items of a person using said carrier.
9. (Original) A carrier as recited in Claim 8, wherein said personal item retaining means includes at least one basket attached to said container.
10. (Original) A carrier as recited in Claim 9, wherein said basket is releasably attached.
11. (Currently Amended) An oxygen bottle carrier for use with a wheelchair; said carrier comprising:
  - an open-top flexible bag-like container adapted for maintaining a close fitting relationship with an oxygen bottle, said container including an upper mouth portion ~~made at least partially from a stiff material~~ including a plastic peripheral insert to enable an oxygen bottle to be loaded vertically while said carrier is attached to a said wheelchair;
  - first retaining strap means for retaining the top of said container to respective handles of the rear of said wheelchair, said first strap means including a pair of upper straps extending from opposing sides of the upper bottle retaining portion of said container, each of said upper strap pair having a snap-fitting buckle portion at the free end of each of said upper



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straps wherein a first of each of said upper strap pair is looped around a portion of said upper support portion and is attached to the other of said upper strap pair via an adjustable and releasable buckle connection ; and

second retaining strap means for retaining the bottom of said container relative to legs at the rear of said wheelchair, said second strap means including lower straps extending from opposite sides of the lower portion of said flexible open-top container, each of said lower straps including hook and loop fasteners enabling each of said lower straps to be selectively looped around the lower support portion of an orthopedic appliance and fastened upon itself, and in which the vertical and lateral attached positions of said container on said wheelchair can be selectively adjusted using said first and second strap means.

12. (Original) A carrier as recited in Claim 11, wherein said container includes a flexible upper bottle retaining portion for preventing said bottle from falling out of said carrier.

13. (Original) A carrier as recited in Claim 12, wherein said upper bottle retaining portion includes a drawstring to selectively reduce the diameter of said portion.

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### **REMARKS**

The above-captioned patent application has been carefully reviewed in light of the non-final Office Action to which this Amendment is responsive. Claims 1, 5 and 11 have been amended in an effort to further clarify and distinctly describe the present invention. Claims 2, 3, 6 and 7 have been canceled. To that end, it is believed no new matter has been added.

Claims 1-3 and 5-13 are pending, Claim 4 having previously been restricted. Each of the elected Claims 1-3, 5-8 and 11-13 has been rejected on prior art grounds. Claim 3 has also been rejected based on 35 USC §112, second paragraph and an objection has been raised relating to Claim 2. Applicant herein respectfully requests reconsideration based on the amended claims, as well as the following discussion.

Applicant gratefully acknowledges the allowability of Claims 9 and 10 over the art of record.

Prior to discussing the prior art rejections in detail, Applicant would like to discuss the novel contributions made by the present invention. That is, a carrier is disclosed that is configured to retain an oxygen bottle and more specifically a carrier that is used in conjunction with one or more orthopedic appliances, including a wheelchair and a walker. The carrier is defined by a flexible open-topped bag or container that snugly retains the oxygen bottle and in which the open-top of the container includes a flexible plastic peripheral portion that is sufficiently stiff, as compared with the remainder of the container, to enable a carrier to receive an oxygen bottle while the carrier is still attached to the appliance; that is, without having to first remove the carrier and then attempt to place the bottle in the container, usually while the container is lying on the floor. The present version enables an oxygen bottle to be retained in a vertical attitude and without requiring removal of the carrier from the orthopedic appliance, greatly easing the ability to swap depleted bottles out of the carrier and introduce charged bottles therein.

According to one version, the carrier is attached to a wheelchair. The carrier, however, includes means that permit the carrier to be independently attachable to each of a wheelchair and a walker. To that end, the carrier includes a first strap means at the upper portion of the container that includes a pair of strap ends. Each pair of strap ends includes a

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corresponding buckle portion enabling one of the strap ends to be looped about the handles of the wheelchair and secured to the remaining strap end and the corresponding buckle portion in a releasable fashion. The straps can be adjusted in terms of their length, once attached. A second strap means is provided at the bottom of the container, this strap means including a pair of strap ends, each of the strap ends extending from opposing sides of the container that can be attached to legs of a wheelchair (or walker). The lower straps each include Velcro™ (hook and loop) fasteners, enabling the strips to be attached onto themselves and providing variations in size – thereby enabling, for example, the carrier to be attached to bariatric as well as other forms of wheelchairs.

Turning to the prior art rejections, the Examiner has rejected Claims 1-3, 5-7 and 11-12 under 35 USC §102(b) as being anticipated by Locarno (U.S. Patent No. 5,288,011). In brief, Locarno describes an oxygen tank holder for a wheelchair. The tank holder includes a container that retains an oxygen bottle and further includes respective pairs of straps located at the top and bottom of the holder, respectively, that secure the holder to the frame of the wheelchair. The pair of upper straps each includes buckles 14, 16 that permit the bottle to be shifted laterally, as needed, relative to the back of the wheelchair. The bottom straps are defined by preformed loops 26, 28 in which one of the loops is preferably made larger than the remaining loop. See col. 2, lines 57-59. The purpose for this relative size difference, as explained in the Locarno reference at col. 3, lines 19-22, is to permit the bottom of the container 2 to remain aligned with the top of the container, as adjusted by the buckles 14, 16. As noted in Locarno, the container can be displaced relative to the center of the back of the wheelchair so as not to interfere with the back of a user of the chair. The bottom straps, however, are not actually separately adjustable. That is, these lower or bottom straps do not allow their own adjustability once they have been attached, outside of the oversizing of one strap versus the remaining strap. The lower straps are defined merely as loops that are sewn to the pouch 2, as clearly shown in Figs. 1 and 2. As such, this configuration would not permit vertical adjustment of the container once attached to the wheelchair. Therefore, the attachment scheme of Locarno fails to permit both lateral and height (vertical) adjustment of the container when attached to the orthopedic appliance.

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Applicant has amended Claim 1 to further clarify the present differences by specifying the structure of first and second strap means in which the first strap means includes pairs of strap ends at opposing ends of the container, each of which having a buckle end and lower strap means that include a pair of strap ends, each of the strap ends extending from opposing sides of the container and having hook and loop fasteners to enable the straps to be looped over the legs of the wheel chair and permit lateral adjustment as well as vertical adjustment based on the adjustability afforded by both strap means. Because the cited reference fails to include all of the essential elements now recited in Claim 1, as amended,, there can be no anticipation under the Statute. Claims 2, 5 and 7 are believed allowable for the same reasons since these claims merely depend from independent Claim 1, as amended. Claims 3 and 6 have been canceled and therefore the rejection is moot with regard to these claims. Reconsideration is respectfully requested.

Claim 11, as amended, is also believed to be patentably distinct of this cited reference in that Locarno fails to provide upper and lower strap means for permitting both lateral and height (vertical) adjustment of the bottle carrier. As previously noted, Locarno fails to suggest, enable or otherwise provide both vertical and lateral adjustment using both strap means for its carrier. Therefore, it is believed Claim 11 is also allowable over the cited reference. Claim 12 is also believed to be distinct, since this claim depends on amended Claim 11. Since the cited reference fails to include essential features, nor provide capability for performing these features, there can be no anticipation under the Statute. Reconsideration is therefore respectfully requested.

Claims 1-3, 5, 6, 8, 11 and 12 have been rejected under 35 USC §102(b) as being anticipated by Sanders (U.S. Patent No. 5,154,331).

Sanders '331 describes an arm rest and pouch that is used in conjunction with a wheelchair. As a preliminary matter, it should be noted that the structure of the rest is provided as a secure storage area for personal items and this device is not configured or otherwise adapted to retain an oxygen bottle. The storage pouch portion of the structure does include provisions for storing an umbrella, as noted by the Examiner, but an umbrella is far lighter, much more flexible and overall is much easier to retain in a lateral arm rest than an oxygen bottle which is relatively heavy, totally inflexible, and would in fact be likely to

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create a load situation that would imbalance the wheelchair or would be difficult for the user, such as in making turns through doorways or other openings, creating a very unsafe and potentially hazardous situation, particularly for the user. In any event, using a structure such as Sanders would clearly be an inappropriate one with regard to the storage of an oxygen bottle and therefore one of ordinary skill in the field as an initial matter would not consult this personal storage reference for teachings concerning the storage and retention of an oxygen bottle.

Even if this cited reference were deemed capable of such functionality, Applicant herein submits that this reference still fails to provide essential elements provided in amended Claims 1 and 11 in that the Sanders patent fails categorically to provide any teaching or suggestion of features that would enable lateral and vertical adjustment of the container once the container is attached to the orthopedic appliance.

As noted previously, Claim 1 has been amended to clarify these features that are provided by the present carrier. Claims 2, 5 and 7 are believed to be allowable for the same reasons. Claims 3 and 6 have been canceled and therefore the rejection with regard to these claims is believed to be moot.

Claim 11 has also been amended to more clearly and distinctly point out the lateral and height adjustable features of the herein described carrier apparatus. As noted, Sanders fails to provide any form of adjustability once the arm rest is placed upon the wheelchair. Claim 12 is believed to be allowable for the same reasons. Reconsideration is respectfully requested.

Claims 1-3, 5-8, 11 and 12 have also been rejected under 35 USC §102(b) as being anticipated by Milluzzi (U.S. Patent No. 5,871,183).

Milluzzi relates to a golf bag carrier having strap members located at the upper and lower portions thereof for securing a golf bag to a wheeled chassis. The carrier further includes adjustability between the straps, so as to handle different sized golf bags by providing a diametral adjustment to permit the bag to be fitted within each of the strap means. It is quite evident from the described structure of this reference, however, that the Milluzzi carrier fails to provide lateral as well as height adjustment capability-see Fig. 1. Moreover, it is equally clear that this reference is quite different from the present invention for other

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reasons. First, this cited reference fails to describe a flexible container. Instead, a golf bag is fitted within a set of straps on a wheeled chassis or frame to permit the bag to be pulled along a golf course by a golfer during a round of golf. The carrier shown is not adapted to support a flexible container that then contains an oxygen bottle and is attached to a wheelchair. Obviously, the wheeled portion of the assembly is not an orthopedic appliance, such as a walker or a wheelchair and it is not understood or gleaned from the reference how this structure would be attached to the support of an orthopedic appliance.

Therefore, it is believed this reference at least on its own could not form a valid anticipatory rejection with regard to Claims 1 and 11, even prior to the present amendment, in that essential features that are claimed are entirely missing from this reference. The above-noted amendments to these claims now clarifying the lateral and vertical adjustability of a supported oxygen bottle further distinguish over the cited reference.

Because the features recited in Claims 1 and 11 are entirely missing from the cited reference, there can be no anticipation of either Claim 1 or Claim 11, as amended, under the Statute. Claims 5, 7, 8 and 12 are believed allowable for the same reasons since the latter claims depend on Claims 1 and 11, respectively. Reconsideration is respectfully requested.

Claim 8 has been rejected under 35 USC §103(a) as being unpatentable over Locarno and further in view of Milluzzi.

In order to make a prima facie obviousness rejection under the Statute, each and every essentially claimed limitation must be found in or suggested by the cited prior art, either singly or in combination. Those limitations that are not found in or suggested by the prior art must be notoriously well known to one of sufficient skill in the field of the invention at the time thereof.

Both Locarno and Milluzzi have each been previously discussed in detail. Neither of these cited references, either separately or in combination, teach, describe or suggest an oxygen bottle carrier that is used for an orthopedic appliance(s) that provides both lateral and height adjustability. Milluzzi relates to the support of a golf bag onto a wheeled chassis in which a pair of straps located at the upper and lower ends thereof provide a level of adjustment, but in which the adjustment permits bags having different diameters to be

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attached. No lateral or height adjustment per se is possible. Locarno describes a carrier used in conjunction with a wheelchair but this reference fails to include both upper and lower straps that permit both lateral and vertical (height) adjustment of a container. As such, each of these references even if combinable fail to include all essential elements of Claim 1.

Therefore, Claim 8 being dependent on Claim 1, is also believed allowable for the same reasons. Reconsideration is therefore respectfully requested.

Claim 13 has also been rejected under 35 USC §103(a) as being unpatentable over Locarno and further in view of Griffin (U.S. Patent No. 6,299,043).

Locarno has been previously discussed herein. This reference fails to teach, describe or suggest a carrier for an oxygen bottle that can be adjusted both vertically (up and down) as well as laterally (side to side) after attachment to an orthopedic appliance, such as a wheelchair and/or walker.

The citation of Griffin '043 fails to include or suggest these essential features. Griffin merely describes a heat resistant container for storing a life line and does not include the foregoing essential features of Claim 11. Therefore, this claim cannot render Claim 13 obvious for the same reasons, since this claim is dependent upon Claim 11. Reconsideration is respectfully requested.

As to the Section 112 rejection and the claim objection, Applicant has canceled Claims 2 and 3. As a result, it is believed that the rejection is now moot and withdrawal of same is therefore respectfully requested.

In summary, it is now believed that the above-captioned application is in an allowable condition and therefore an expedited Notice of Allowance is earnestly solicited.

If the Examiner wishes to expedite disposition of the above-captioned patent application, she is invited to contact Applicant's representative at the telephone number below.

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The Director is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0289.

Respectfully submitted,

**WALL MARJAMA & BILINSKI LLP**

By:

\_\_\_\_\_  
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